

**COMPLAINT INVESTIGATION  
CLARK COUNTY SCHOOL DISTRICT  
(#CL060208)**

**INTRODUCTION**

On June 2, 2008, the Nevada Superintendent of Public Instruction received a complaint dated May 30, 2008, from the parents of a student with disabilities alleging violations in the special education program in the Clark County School District (CCSD). An investigation team was appointed to examine the allegations that CCSD had: 1) denied their son an independent educational evaluation (IEE) for speech and language and 2) interfered with their attempts to have a behavior analyst from the regional center evaluate the student's behavior by limiting the amount of time he could observe the student.

Under the provisions of 34 CFR §300.152(b) of the Individuals with Disabilities Education Act (IDEA), the Nevada Department of Education (NDE) extended the timeline for the completion of the complaint investigation due to the unavailability during the summer months of CCSD personnel with whom interviews were necessary. The parents and district were notified of this extension in letters dated July 9, 2008.

**COMPLAINT ISSUES**

The allegation in the complaint raised the following issues under the jurisdiction of the NDE:

- ISSUE 1:** Whether the CCSD complied with state regulations with regard to the provision of an IEE.
- ISSUE 2:** Whether the CCSD complied with federal and state regulations to provide an opportunity for parent participation in the student's evaluation, and the development, review and revision of the Individualized Educational Program (IEP), specifically with regard to permitting an observation and limiting the amount of time of that observation.

**PERSONS INTERVIEWED**

The investigation team interviewed the following persons:

- Director of Related Services
- Parent
- Northwest Coordinator

**DOCUMENTS REVIEWED**

The investigation team reviewed the following documents:

- IEPs dated 12/17/07 and 4/30/08
- Parental Prior Notices of District Refusal dated 1/15/08 and 5/7/08
- Multidisciplinary Evaluation Team Report dated 12/4/07
- Student Progress reports for spring 2008
- Student Positive Behavior-Intervention Support Plan (BIP)
- Parent letter dated 5/30/08

- District letter dated 6/10/08
- CCSD evaluation and assessment procedures
- CCSD Memo titled "Classroom Disruption by Independent Evaluators" dated January 5, 2007

The investigation team also reviewed the following material:

- Nevada Administrative Code (NAC), Chapter 388
- IDEA Regulations, 34 CFR Part 300
- U.S. Department of Education, Office of Special Education Programs (OSEP) Policy Letter, May 26, 2004 (42 IDELR 10)

## **FINDINGS OF FACT**

This investigation involved a student who attended school in the CCSD during the 2007/2008 school year. A review of documents, an interview with the parent, the director of related services, and the northwest coordinator revealed the following facts.

### **Independent Educational Evaluation**

Documents indicate that during an IEP meeting held on December 17, 2007 (12/17/07 IEP), the parents requested an IEE in the area of speech and language. This request was recorded in the "Parent Concerns" section of the 12/17/07 IEP. The parents reported that the request was made because they disagreed with the findings of the district's Speech and Language Assessment dated December 4, 2007. On January 15, 2008, the district notified the parents of its refusal to provide an IEE (1/15/08 Notice of Refusal). At an IEP meeting held on April 30, 2008 (4/30/08 IEP), the parents again requested an IEE. On May 7, 2008, the district notified the parents of its refusal to provide an IEE (5/07/08 Notice of Refusal).

There were no reports or documents provided by district staff or the parents that the district requested a due process hearing to determine if its current speech and language evaluations were appropriate following the parents' requests for an IEE at the 12/17/07 and 4/30/08 IEP meetings. The parents requested an IEE a third time in a letter to district staff dated May 30, 2008. In a letter dated June 10, 2008, the district offered to provide and pay for an IEE for the student. The director of related services reported that no offer of an IEE had been made prior to the letter dated June 10, 2008. The district did not report any factors under these circumstances which would justify a delay in requesting a due process hearing or in providing the IEE at public expense. The parent reported that the IEE was subsequently conducted in August 2008.

### **Behavioral Evaluation**

At the 12/17/07 IEP meeting, the parents requested access to the school for a 2-3 hour time period for a behavior analyst provided by the regional center to observe the student. This request was recorded in the 12/17/07 IEP. The parent reported that while the behavior analyst needed a 2-3 hour block of time to observe the student in the classroom, the district informed the parents and the behavior analyst that he could only observe in the student's classroom for 30 minutes at a time.

A district memo titled "Classroom Disruption by Independent Evaluators" (Memo) dated January 5, 2007, requires that visits of outside evaluators must be prearranged with school administration. The Memo also recommends that at least one administrator be present during any observation or evaluation and that outside evaluators should not spend more than one half

hour in the classroom at any one time. The Memo was written in response to the concerns of district staff that classroom instruction was being disrupted by the numbers of independent evaluators coming into classrooms. The northwest coordinator reported that the behavior analyst and the parents were aware of these requirements.

The northwest coordinator reported that the behavior analyst arrived at the school without a pre-arranged appointment during the spring 2008 semester, sometime prior to April 30<sup>th</sup>. There was not an administrator available to sit with him during an observation and he was not allowed to observe. Subsequent to that attempted observation, the northwest coordinator spoke with the behavior analyst and offered to arrange a time for the observation with her in attendance. She asked the behavior analyst to confirm a particular date in May that they had tentatively agreed on and the behavior analyst agreed to confirm the date at a later time. The northwest coordinator reported that the behavior analyst did not confirm the date with her, but did show up at the school to observe on that date. The northwest coordinator was not available because she had not heard from the behavior analyst and he was not permitted to observe. The complaint investigation team attempted to get contact information for the behavior analyst to discuss his attempts to observe but the parent did not respond to several requests for that information prior to the complaint investigation team completing its investigation.

## **CONCLUSIONS OF LAW AND REASONS**

**ISSUE 1:** Whether the CCSD complied with state regulations with regard to the provision of an IEE.

This complaint concerned an allegation that the district had denied the student an IEE and that the parents should be reimbursed for the cost of an IEE.

State regulations at NAC §388.450(1) state that “A parent may request a public agency to pay for an independent educational evaluation of a pupil if the parent disagrees with the results of an evaluation obtained by the public agency. The public agency shall, without unnecessary delay, either request a hearing ... if it believes that its evaluation of the pupil is appropriate, or ensure that an educational evaluation is provided at public expense.”

In this case, the parents first requested an IEE on December 17, 2007, again on April 30, 2008, and again on May 30, 2008. Following the first request on December 17, 2007, the district was obligated **without unnecessary delay** (emphasis added) to either request a due process hearing to determine if its speech evaluation was appropriate or to provide the IEE at public expense. The district refused to provide the IEE but did not request a due process hearing to determine that its speech evaluation was appropriate and did not offer to provide the IEE at public expense until June 10, 2008, more than five months after the initial request. No explanations were offered which would justify this delay. Therefore, the investigation team determined that a five-month delay to either request a due process hearing or to provide an IEE at public expense was an unnecessary delay and therefore a violation of the state regulations.

*Therefore, the investigation team concluded that CCSD did not comply with state regulations with regard to the provision of an IEE.*

**ISSUE 2:** Whether the CCSD complied with federal and state regulations to provide an opportunity for parent participation in the student's evaluation, and the development, review and revision of the IEP, specifically with regard to permitting an observation and limiting the amount of time of that observation.

This complaint concerned an allegation that the district interfered with the parents' attempt to have a behavior analyst observe the student by placing obstacles in the way of the observation and not allowing for a 2-3 hour block of observation time in the classroom.

Federal regulations at 34 CFR §300.324(b)(1)(ii)(C) require that the IEP team revise the IEP as appropriate to address "information about the child provided to, or by, the parents ... "

State regulations at NAC §388.340(1) states that the public agency shall use a variety of assessment tools and strategies to gather relevant functional ... information concerning the pupil, "including without limitation, information provided by the parent ... "

A policy letter from the OSEP (42 IDELR 10 (OSEP May 26, 2004)) clarified that while the IDEA expects parents of children with disabilities to have an expanded role in the evaluation and educational placement of their children and be participants, along with school personnel, in developing, reviewing and revising the IEPs for their children, neither IDEA or its regulations provide a general entitlement for parents of children with disabilities to have their professional representatives observe their children in any current classroom. "The determination of who has access to classrooms may be addressed by State and/or local policy. However, we encourage school district personnel and parents to work together in ways that **meet the needs of both the parents and the school** (emphasis added) ..."

In this case, the parents wanted the behavior analyst to observe the student for a 2-3 hour block of time. The parents, in their role as participants in the evaluations of the student, and in the development, review and revision of his IEP, were entitled to obtain and present the results of any observations by the behavior analyst to the district. District policy, established to minimize disruption to the classrooms and meet school needs, recommends observations be limited to thirty-minute blocks of time and that a school administrator be present at the observation. The policy also requires that observations be pre-arranged with the school. The complaint investigation team was informed that the behavior analyst and the parents knew of these requirements. The district was entitled to set parameters for observation to meet the needs of both the parents and the school. The recommendation to limit observations to thirty-minute blocks of time and to make pre-arranged appointments to observe did not prevent the parent from providing information to the district for either assessment purposes or for developing, reviewing or revising the student's IEP. The policy of the district did not prevent the behavior analyst from making several appointments and returning, under the conditions established by the district to observe for additional blocks of time until he felt he had obtained adequate data. Further, the miscommunication between the northwest coordinator and the behavior analyst with regard to one pre-arranged visit also did not prevent the behavior analyst from requesting another time to visit.

*Therefore, the investigation team concluded that CCSD did comply with federal and state regulations to provide an provide an opportunity for parent participation in the student's*

*evaluation, and the development, review and revision of the IEP, specifically with regard to permitting an observation and limiting the amount of time of that observation.*

### **ORDER FOR CORRECTIVE ACTION**

CCSD is required to take corrective actions to address the violation found in this complaint investigation. Specifically, the district did not, without unnecessary delay, either file a request for a due process hearing to determine whether its speech and language evaluation was appropriate or provide an IEE at public expense after the parents made the first request for an IEE.

The NDE recognizes that on June 10, 2008, subsequent to the date of the complaint, the CCSD agreed to provide and pay for a speech and language IEE at public expense. An IEE was then arranged and obtained by the parents in August, and the CCSD offered to pay for the cost of this IEE. Upon receipt of verifiable invoices or other documentation of the cost for the speech and language IEE obtained by the parents, the CCSD must either reimburse the parents for payments they made, or directly pay the evaluator within 45 calendar days. Further, the CCSD must provide the NDE with documentation of this payment within 30 calendar days after the payment has been made.

Within 30 days of receipt of this report, CCSD must develop and submit to NDE a proposed Corrective Action Plan (CAP). The CAP must include a plan to review and revise, where necessary, site-level and district-level policies and procedures, and provide training to pertinent members of IEP teams with regard to responding, without unnecessary delay, to requests for IEEs, either by filing a request for a due process hearing to show that the district's evaluations are appropriate when it decides not to grant the IEE request, or by providing the IEE at public expense when it decides to grant the IEE request.

The CAP must be approved by NDE prior to implementation. Following implementation of the approved activities, documentation of district corrective actions must be provided to NDE within 30 days of completion.